

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

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DDI-2641-74

6 December 1974

Mr. Robert Saloschin  
Office of Legal Counsel  
Department of Justice  
Room 5234 Main Justice  
Washington, D.C. 20530

Dear Mr. Saloschin:

We have received your memorandum of 2 December 1974 requesting comments on the draft "Preliminary Guidance" which Justice proposes to issue to agencies. In view of the tight deadline, we are responding with our own preliminary comments and, within the next day or so, will forward any additional comments we may develop.

You ask whether we believe a meeting is necessary to discuss the comments received by Justice from the departments. We believe not and indeed we would agree that the delay which a meeting would cause is too expensive in time. We note also your comment that the guidance to be distributed now is preliminary and is subject to possible correction later.

The basic thrust of the proposed guidance is that agencies will need to take various actions promptly to bring themselves into compliance and all concerned should direct their actions in this direction. We entirely agree. We have taken a number of steps to this effect already, one of which is that we are systematically briefing senior management throughout the Agency. There are many additional steps to be taken, in particular to revise current regulations and develop additional instructions, and we are proceeding with them on an urgent basis.

We believe the proposed guidance is very helpful and informative and will do much to alleviate the very serious problems with which we are all faced under the amended Act, but we also believe the problems are difficult ones and the guidance can, at best, be helpful.

Our comments on specific points follow:

(a) The first sentence of the third paragraph on page 2 reads as follows: "The above time limits should prove generally adequate, or more than adequate, for the proper processing of ordinary requests in normal circumstances." This statement seems, at best, misleading. In fact, the time limits are grossly inadequate if requests come in any number or involve dragnet approaches or are complicated. Moreover, the unreasonable time limits is one of the situations to which the President objected, both in his veto message and in his request for a substitute bill. While it might not be appropriate for the Department of Justice to include in its guidelines to agencies language such as the above, which possibly could be considered critical of the provisions of the law, we think it important that Justice not go on record in defense or support of those time limits. To that end we suggest the sentence be revised substantially as follows: "At this stage there is no way to know whether these time limits are adequate."

(b) On a related point, the last sentence of the first paragraph on page 5 is as follows: "To the extent this may involve an unavoidable conflict with the performance of other duly prescribed agency duties on which no time limit has been imposed by law, it should generally be assumed that first priority must be given to the processing of requests and appeals under the Act as amended." While the sentence contains language permitting discretion, we think in many cases, and perhaps indeed in all cases where the conflict between the requirements of the 1974 Amendments and other duly prescribed agency duties is an "unavoidable" one, an agency would not be justified in giving first priority to processing requests under the Act. In the intelligence field, for example, the value and usefulness of intelligence is directly related to its timeliness. This Office would not be prepared to advise our people that they should give priority to Freedom of Information requests at the expense of providing quality and timely intelligence, although we of course would emphasize the risk of litigation. We suggest therefore that the Department of Justice guidelines be revised to readily accommodate this type of management decision on the part of the agencies. A sentence could be added following the one quoted above substantially as follows: "But it of course is the responsibility of the agencies to determine the efforts they must make to comply with conflicting legal requirements upon them and to allocate their resources appropriately."

(c) Your suggestion in the last paragraph beginning on page 2 that "very explicit and well-conceived instructions to requesters on how to address their requests and their appeals" should prove beneficial both to the agencies and to the requesters. For example, the revised Section 552(a)(3) of Title 5 indicates that requests must be made "in accordance with published rules stating the . . . procedures to be followed." We assume a request which is not in compliance with published procedures in that it is not properly addressed would not begin the running of the 10 and 20-day periods.

(d) Your suggestion (paragraph 2 on page 3) that agencies undertake to enter into agreement with requesters for an extension of time in cases where compliance with the deadline is difficult, if not impossible, makes great good sense and should prove acceptable to all but the most unreasonable requesters.

(e) The restrictive language in the penultimate sentence of paragraph 2 on page 4, "and is sued," seems unwise. If an agency fails to "issue a timely initial determination," it should nevertheless continue to process the request, even if it is not sued.

(f) As requested, we will study the matter raised in your paragraph 4 and we will be in touch with you on that subject.

(g) The time limits imposed by the 1974 Amendments would make it virtually impossible to comply with the Attorney General's request in his letter of 11 July 1973 to consult with the Department's Freedom of Information Committee prior to the issuance of a final denial. It would seem desirable to include such a statement in the Preliminary Guidance.

(h) As you know, under the Amendments, the request need only "reasonably describe" the records desired. In theory at least, this is such a broad description of the documents which may be requested that the agencies would be paralyzed. A request for all documents produced by the Department of X from 1960-1970 might be considered a request which "reasonably describes" the records sought. If in

your view such dragnet requests are not permitted by the language of the amended 552(a)(3), it would seem useful if the Justice guidelines could include advice which would permit agencies to control and limit the range or category of documents which may be requested.

Sincerely,

STATINTL

  
Associate General Counsel

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

STATINTL

FROM:	Associate General Counsel	EXTENSION	NO.		
			DATE	RECEIVED	FORWARDED
1.	DD/I 7E-44				Attached is a copy of the CIA preliminary comments to the Department of Justice, prepared by OGC, concerning the Department's "Preliminary Guidance" which we received from the Department of Justice late Wednesday. We are forwarding these preliminary comments to Justice this morning, but as we indicated in our transmittal sheet of 5 December, we propose to forward any additional comments early next week.
2.	DD/O 7E-26				
3.	DD/A 7D-26				
4.	DD/S&T 6E-60				
5.	D/DCI/IC 7E-13				
6.	D/DCI/NIO 7E-62				
7.	Inspector General 2E-24				
8.	Mr. Thuermel Asst. to the Director				
9.	1F04				
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*file Freedom of Claps* *BB*  
*1/19/74*

MEMORANDUM FOR: Messrs. Proctor/Warsh *BB*

FYI -- These are the preliminary OGC comments on the Freedom of Information Act. (Copy was sent to [REDACTED] on Friday. I have also sent to Harry Eisenbeiss). *Done*  
*12/9/74*  
*6n*

9 Dec 74  
(DATE)

FORM NO. 101 REPLACES FORM 10-101  
1 AUG 54 WHICH MAY BE USED.

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